***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

+WRIT PETITION Nos. 22557, 22566, 22571, 22632, 22638, 22645, 22647, 22680, 22708, 22722, 22748 and 22752 of 2005

% 21-10-2005

PRATHIPATI BHAGYAMMA, W/O.JAGANNADHAM, MUPPALLA,

GUNTUR DISTRICT AND OTHERS

..PETITIONERS

Vs.

$ THE ELECTION OFFICER, MUPPALLA PACS, GUNTUR DISTRICT

AND OTHERS

..RESPONDENTS

! COUNSEL FOR PETITIONERS: M/s. M.VENKATA NARAYANA, M.S.N.PRASAD, B.G.RAVINDER REDDY, K.BALAGOPAL, A.V.SESHA SAI, V.R.REDDY KOVVURI, D.V.BHADRAM, B.MAHENDER REDDY

^ COUNSEL FOR RESPONDENTS 1 TO 3: G.P. FOR COOPERATION

COUNSEL FOR RESPONDENT No.4: NONE APPEARED

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. 1986(1) APLJ 77 (SRC)
2. AIR 2002 Bombay 87
3. (2001) 8 SCC 509

4. (1992) 1 Mah LJ 883

5. 1992 Mah LJ 1052

6. 2000(3) AIT 617

7. 2001(4) ALT 389 (DB)

8. 2001(4) ALT 309 (FB)

9. 2001(4) ALT 476 (DB)

10. 2004(6) ALD 587 (FB)

11. (2004) 7 SCC 492

12. AIR 1992 AP 220

13. 2002(1) ALD 621 (DB)

14. 2000(1) LLJ 831

15. (1998) 8 SCC 703

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.22557, 22566, 22571,

22632, 22638, 22645, 22647, 22680, 22708,

22722, 22748 and 22752 of 2005

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21.10.2005

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Between:

Prathipati Bhagyamma, W/o.Jagannadham, Muppalla,

Guntur District.

And others

… Petitioners

AND

1. The Election Officer, Muppalla PACS, Guntur District

and others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.22557, 22566, 22571, 22632, 22638, 22645, 22647, 22680, 22708, 22722, 22748 and 22752 of 2005

COMMON ORDER:

In all these Writ Petitions the petitioners are aggrieved by rejection of nomination or improper acceptance of nomination by the designated election officer in the elections for various cooperative societies. The Government of Andhra Pradesh announced elections to cooperative societies on 5.10.2005. Pursuant thereto, all the election officers issued notice of election prescribing the schedule. Election notice was issued on 6.10.2005. The last date for filing nominations is 14.10.2005 and scrutiny of nominations was on 16.10.2005. After scrutinizing the nominations as per the provisions of Rule 22 of the A.P. Cooperative Societies Rules, 1964 (for short, the Rules), as amended by G.O.Ms.No.223, dt.27.6.2005 and G.O.Ms.No.324, dt.29.7.2005 the elections officer is required to publish the list of valid nominations, allot symbols, and conduct elections. The election is scheduled to be conducted on 22.10.2005 or on 26.10.2005.

In W.P.No.22557 of 2005, the petitioner is a member of primary agricultural cooperative society (PACS), Muppulla in Guntur District. She filed nomination on 14.10.2005. Her nomination was rejected by the election officer. In the communication issued on 16.10.2005 by the election officer, it was mentioned that on a complaint given by one of the candidates, when the Panchayat Secretary enquired, the petitioner stated that she did not go to the office of the election officer and that she did not sign the nomination papers. The petitioner contends that the election officer rejected the nomination without recording the statement of the petitioner and therefore it is illegal. She also asserts that petitioner indeed filed her nomination.

In W.P.No.22566 of 2005 there are two petitioners. They are members of Gowada PACS, Addanki Mandal, Prakasam District. First petitioner filed nomination for Member of Managing Committee for 6th Ward and second petitioner filed nomination for 5th Ward. They alleged that in the list of valid nominations in Form-V prepared on 15.10.2005 their names were found, whereas subsequently on the same day their nominations were deleted in Form-IV, mentioning that they paid the arrears due to the society on 14.10.2005 and therefore their nominations were rejected. It is contended that the election officer became functus officio after publishing Form-IV and therefore the rejection is illegal.

In W.P.No.22571 of 2005, the petitioner is member of PACS, Parastyalluru, in Guntur District. She filed her nomination for constituency No.13 reserved for Scheduled Castes (Women). Her name was included in form -IV, but in form-VII while publishing the list of valid nominations her name was deleted. It is contended that the election officer has no power or authority to delete the names in the list of candidates when once it is published and that the election officer also gave a statement to the effect that there are 38 candidates in the fray, but ultimately in form-VII only 37 candidates are included, deleting name of the petitioner.

In W.P.No.22632 of 2005, the petitioner is member of PACS, Bijinapally in Mahabubnagar District. He filed nomination for Managing Committee Member which was rejected on the ground that he is having three children which is a disqualification under Section 21A(1A) of the Act A.P.Cooperative Societies Act, 1964 (for short, the Act). It is contended that the third child was born on 5.2.1995 and therefore it is not a disqualification as the child was born before the provision came into force.

In W.P.No.22638 of 2005 the petitioner is member of PACS, Doolapally in Ranga Reddy District. He filed his nomination for ward No.6 along with fifth respondent in the Writ Petition. According to the petitioner fifth respondent is having three daughters and one son and he was also convicted by the Criminal Court and therefore he incurs disqualification. The grievance of the petitioner is that the nomination of the fifth respondent is improperly accepted and therefore his name should be deleted.

In W.P.No.22645 of 2005, the petitioner, who is a member of PACS, Yenmangadla Village, in Mahabubnagar District, filed nomination for ward No.1 reserved for Scheduled Castes. He alleges that election officer rejected the nomination without passing any orders orally informing the petitioner. The petitioner contends that the oral rejection of nomination without passing an Order is illegal. Reliance is placed on the decision of this Court in **T. Sita Ram v. Election Officer.**

In W.P.No.22647 of 2005 the petitioner is a member of PACS, Ulindakonda, Kallur Mandal. He filed nomination as Scheduled Tribe candidate, but his nomination was rejected on the ground that he defaulted in payment of loan instalments to the society. It is contended that as per letter dt.16.10.2005 issued by the Secretary of PACS, the repayment of the loan is rescheduled and therefore petitioner cannot be said to have committed default in repaying the loan.

In W.P.No.22680 of 2005, the petitioner who is member of Large Sized Cooperative Credit Society (LSCS), Kalla, in West Godavari District was rejected on the ground that he is father-in-law of a paid employee of the society. In the rejection order the election officer mentioned that on enquiry it was revealed that petitioner's nephew and son-in-law is working in Kalla LSCS and therefore his nomination is rejected. The petitioner relies on Section 21A (1)(a) of the Act and Rule 24 of the Rules as well as the circular memo issued by the Commissioner of Cooperative Societies on 30.9.2005 and contends that even if son-in-law of the petitioner is paid employee, the same is not a disqualification and therefore rejection of the

nomination is illegal.

In W.P.No.22708 of 2005 the petitioner is a member of PACS, Pangal in Mahabubnagar District. He filed his nomination for 12th ward of the society on 14.10.2005. The election officer while publishing the list of valid nominations in form-V on 15.10.2005 rejected the nomination of the petitioner on the ground that serial number of first proposer in the nomination is wrongly mentioned. It is contended that as per Rule 22(5)(c) of the Rules even if there is a mistake in spelling, name of the proposer or in giving particulars of the proposer, election officer cannot reject the nomination.

In W.P.No.22722 of 2005, the petitioner is aggrieved by improper acceptance of the nomination of the fifth respondent in Writ Petition. It is alleged by the petitioner that the said fifth respondent is incurred disqualification under Section 21A(1A) as he has three children and acceptance of his nomination is therefore illegal.

In W.P.No.22748 of 2005, the petitioner challenges the proceedings dt.19.10.2005 issued by the election officer of PACS, Kodanagula, Balmoor Mandal, Mahabubnagar District, on the ground that such rejection is illegal. The petitioner's nomination was rejected on the ground that he has four children. It is pointed out that while rejecting the nomination by communication dt.19.10.2005 the election officer relied on the certificate issued by the Professor of Obstetrics and Gynaecology, Osmania Medical College to the effect that Gundala Lakshmi, W/o.Chandra Mohan delivered another child at home on 1.7.2003. It is urged that the name of the wife of the petitioner is Jangamma and not Lakshmi. Therefore, it is urged that the rejection of the nomination is wholly unsustainable. Reliance is placed on the decision of the Division Bench of Bombay High Court in **Anant Janardan Patil v. State of Maharashtra** in support of the contention that when the nomination is rejected illegally, Writ Petition would lie.

In W.P.No.22752 of 2005 the petitioner is resident of Akula Milaram Village of Kandukur Mandal. He is member of PACS Kandukur. Pursuant to election notice issued by the election officer, it appears, eight persons filed their nominations including one Gowra Srisailam, S/o.Mallaiah. Accordingly, after scrutiny, the election officer included the name of Gowra Srisailam in the final list of nominations. The petitioner alleges that said Srisailam is fictitious person and fraud was played by somebody styling himself as Gowra Srisailam and claimed to be member vide admission No.1882. It is the contention of the petitioner that as per the voters' list one Achena Eswaraiah, S/o.Beerappa with admission No.1882 is mentioned at serial No.1383 and therefore Gowra Srisailam is not a person nor voter with serial No.1882. For this reason, the petitioner seeks invalidation of the elections.

From a brief narration of the facts as above, as observed at the beginning, it becomes clear that all the petitioners are aggrieved either by the rejection of their nominations or alleged improper acceptance of the nominations of other members, who are arrayed as respondents in the respective Writ Petitions. Learned counsel for

the petitioners, M/s.M.Venkata Narayana, M.S.N.Prasad, B.G.Ravinder Reddy, K.Balagopal, A.V.Sesha Sai, V.R.Reddy Kovvuri, D.V.Bhadram, B.Mahender Reddy strenuously contended with reference to the provisions of the Act and the Rules, that rejection of the nominations filed by their respective clients or acceptance of the nominations of the contesting respondents is illegal. They would urge that when the rejection of the nomination is vitiated by patent illegality, the exercise of jurisdiction under Article 226 of the Constitution of India is not barred.

Learned Government Pleader for Cooperative Department Sri Seshagiri Rao submits that when once the election notification is issued, a Writ Petition would not lie. According to the learned counsel, in view of provisions of Section 61(3) of the Act and Rules 49A and 49B of the Rules, the petitioners have an effective alternative remedy and in view of the disputed questions of fact, Writ Petitions are not maintainable. He placed reliance on various decisions of this Court and Supreme Court.

Section 61 of the Act provides the remedies for resolution of the dispute by Registrar of the Societies. Sub-section (3) of Section 61 lays down that every "**dispute relating to, or in connection with**" any election to a committee of a society shall be referred to a decision to the Tribunal as constituted under Section 75 of the Act. Therefore, any dispute in connection with the election either issue of notification, preparation of voters' list, acceptance/rejection of nominations, contravention of rules and regulations at the time of polling, counting and declaration of results are all matters which come within the purview of the phrase "**dispute relating to, or in connection with**".

In **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra** dealing with Maharashtra Cooperative Societies Act, 1960 and Maharashtra Specified Cooperative Societies Elections to Committees Rules, 1971, the Supreme Court held as under.

> Once the statute provides that the preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified Society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters' list must be held to be part of the election process fof constituting Managing Committee of a specified Society. In **Someshwar Sahakari Sakhar Karkhana Ltd. Someshwarnagar v. Shriniwas Patil, Collector,**, it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the Managing Committee of a specified Society is an intermediate stage in the process of the election. Similar view was taken in **Shivnarayan Amarchand Paliwal v. Vasantrao**

Vithalrao Gurjar

Rule 22(1) as amended deals with conduct of elections to the cooperative societies. It encompasses the appointment of election authority, election officer, issue of notice by the election officer, preparation of voters' list by the President/Chief Executive Officer of the State, calling/scrutiny/withdrawal/publication of nominations, voting and declaration of result. Therefore, the rejection of nomination or improper acceptance of nomination cannot be challenged in a writ petition, under Article 226 of Constitution of India.

I n **V. Narayana v. Election Officer, Alwal Municipality, K.Pamulu v. Collector and District Election Authority, Guntur A.P.Sarpanchas Association v Government of A.P., G.Kanaka Durga v. State Election Commissioner** and **Kalla Ramakrishna v. State Election Commission, Hyderabad** this Court has held that a person who is aggrieved by rejection of nomination or improper acceptance of nomination has to seek remedy before the duly constituted election tribunal and that Writ Petition is barred.

In **Narayana**, this Court considered various writ petitions filed by the candidates for Municipal Elections, 2000, against rejection of their nominations. This Court while rejecting the writ petitions observed as under.

> It is too well settled that an election to a municipality shall not be called in question in a writ petition under Art.226 of the Constitution of India. That is what clause (b) of Art.243-ZG of the Constitution says. The said proviso says that an election can be questioned only by way of an election petition before a duly constituted authority in the manner provided for by the law or under any law made by the State Legislature. There cannot be any doubt that a 'challenge to an election' means and includes a challenge to any intermediary stage in the election. These intermediary stages could be 'issue of election notification', filing of nominations, scrutiny of nominations, rejection of nomination, voting on the polling day, declaration of results, declaration of the elected candidates and re-constitution of the municipality by duly designated authorities and authorities specified under the A.P.Municipalities Act, 1965 (the Act, for brevity) and various rules made under Section 326 of the Act. Therefore, any challenge to any order or any act at the intermediary stage of the election can only be made before the duly constituted Special Tribunal constituted for the purpose. Clause (b) of sub-section (2) of Section 326 of the Act empowers the State Government to constitute an Election Tribunal.

It was also held therein that improper acceptance or improper refusal or rejection of nomination papers being one of the grounds under Rule 10(c) of the Rules, a writ petition is not maintainable. It was further held that a person who is aggrieved by rejection of nomination has to approach the Election Tribunal. The Division Bench (to which I was a member) in **Pamulu**, was dealing with a case of rejection of nomination in Panchayat elections. The Division Bench followed the decision in **Narayana**, while dismissing the writ petition. A Full Bench of this Court in

Sarpanchas Association as well as in **Kanaka Durga** followed the decision in **Narayana**.

In **Kalla Ramakrishna**, a Full Bench of this Court again considered the question. Doubting the ratio in **Pamulu** (mentioned as **Ramulu** case), the Division Bench referred the matter to Full Bench. The Full Bench noticed the decision cited hereinabove as well as the authorities of the Supreme Court and held that the view of this Court in the above cited cases is in conformity with the consistent view taken by the Supreme Court. It was also laid down therein as under.

> … The person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with the law calling in question the election of the successful candidate. Any matter, which has the effect of vitiating an election, should be brought up only at appropriate stage in an appropriate manner before a Special Tribunal constituted for the purpose and should not be brought up at an intermediate stage before any Court. In other words, in election matters, only one remedy is available, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers.

In **Manda Jagannath v. K.S.Rathnam**, the Supreme Court held as under.

> The next argument of learned counsel for the respondent is that as per the provisions of Section 36 of the Representation of the People Act, Rule 4 of the Conduct of Elections Rules, 1961 and clause 13 of the Election Symbols (reservation and Allotment) Order, 1968, **the omissions found by the Returning Officer in Form B filed by the respondent herein are all curable irregularities and are not defects of substantial nature, calling for rejection of the nomination paper. We think these arguments based on the provisions of the statutes, rules and orders are all arguments which can be addressed in a properly constituted election petition, if need be, and cannot be a ground for setting aside the order of the Returning Officer which is prima facie just and proper, in our opinion.**
>
> (emphasis supplied)

The learned Counsel for the petitioners made elaborate submissions. To demonstrate that the rejection of nomination is illegal, contrary to the provisions of the Act and various Rules, in some of the writ petitions, the attack is based also on the grounds of arbitrariness and unreasonableness. As this Court has considered the preliminary question as to maintainability of the writ petitions in election matters, it would be improper for this Court to consider the merits of each case. The questions raised are to be considered by the Tribunal, as and when the election is challenged in a proper petition, after recording the evidence.

It is however submitted by some of the learned counsel for the petitioners that when the nomination is rejected in gross contravention of the Rules and Regulations in an

arbitrary manner, a Writ Petition would lie. They have also cited some decisions in support of their contentions. In **Gangarapu Ushaiah v. District Collector (Cooperation) Medak District** this Court was dealing with a case of rejection of nomination in connection with elections to PACS Chintakunta Village, in 1992. While observing that if there are any disputed questions of fact, a Writ Petition would lie. This Court laid down as under.

> **It is well settled that when once an election process has begun, this Court should not ordinarily interfere in the said election process**. But when once the rejection order of a candidate is patently bad, it is not desirable for this Court to drive such a person to an Election Tribunal. **If there are any disputed facts and those disputed facts have to be investigated, then this Court may not interfere under Article 226 of the Constitution**. There is no dispute with regard to the membership of the petitioner in the 3rd respondent-Society. He mentioned his name at Serial No.984 as against 982. The respondents have not come out with any case that there is another person by name 'Ushaiah' and the petitioner's identity is in doubt. There are only two nominations, one is that of the petitioner and the other is that of Ganta Vittal, who is now sought to be impleaded as the fourth respondent in the writ petition. When the petitioner's nomination was rejected, there remains only one valid nomination of the proposed respondent and he was declared elected unanimously. It is only at the behest of the proposed respondent who raised an objection with regard to the variance in the serial number mentioned by the petitioner, that his nomination was rejected.
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> (emphasis supplied)

In **M.J.Veeramani v. Government of A.P.** the election for the post of President and Managing Committee Members of Bhagyalakshmi Cooperative Housing Society Limited was challenged. Initially, a learned Single Judge ordered suspension of election notification which was subsequently vacated placing reliance on **Shri Sant Sadguru Janardan Swami case** (supra). The Division bench, to which I was a member, considered the question whether a Writ Petition challenging the election of Managing Committee of Co-operative Society is maintainable. It was held therein.

> Another Division Bench of Rajasthan High Court in the judgment reported in **O.P.Gupta v. Union of India and others** dismissed a Special Appeal wherein a similar question was raised following the very recent pronouncement of the Supreme Court which has interpreted the term "election" to include all steps and entire proceedings commencing from the date of notification of the election till the date of declaration of result and held that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented by such manner as may be provided for by or under any law made by the appropriate Legislature. The Supreme Court has pointed out that if an election is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of *judicial remedy* by writ petition has to be postponed till after the completing of proceedings in an election. The Apex Court has further observed that any decision sought and rendered will not amount to *calling in question an election* if it subserves the progress of the

> election and facilitate the completion of the election and anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

Some of the learned counsel have strenuously urged that when there is patent illegality in violation of Act and Rules, Writ Petition is not barred. I am afraid, the submission cannot be accepted in view of the judgment of the Supreme Court in **C.Subrahmanyam v. K.Ramanjaneyulu** which arose under A.P.Panchayat Raj Act, 1994. In the said judgment the Supreme Court observed as under.

> The impugned order was made by the High Court in a writ petition under Article 226 of the Constitution of India filed to challenge an order directing repoll made during the process of election. The first question was whether the writ petition should have been entertained in view of the remedy of election petition under the Act. The High Court took the view that the main point for decision was whether the order directing repoll is in violation of Section 231 of the Andhra Pradesh Panchayat Raj Act, 1994. Having taken this view, the High Court proceeded to say that a reference was made to a provision of the Constitution in that order and, therefore, the writ petition would lie and the impugned order was quashed for violation of Section 231 of the Act.
>
> In our opinion, the main question for decision being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution of India should not have been entertained for this purpose. Accordingly, the appeal is allowed. The impugned order of the High Court is set aside resulting in dismissal of the writ petition.

In the result, for various reasons as above, these Writ Petitions are not maintainable. Liberty is given to the petitioners to challenge the election after declaration of result before competent Tribunal under Section 61(3) of the Act. Those elections petitions may be disposed of by the concerned Tribunal within a period of six months from the date of presentation of the petitions. In these Writ Petitions no relief can be granted to the writ petitioners. The writ petitions are accordingly dismissed.

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(**V.V.S.RAO, J**)

21.10.2005

NOTE:

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To

(One fair copy to the Hon'ble Mr. Justice V.V.S.Rao, for His Lordships kind perusal)

1 The Election Officer, Muppalla Primary Agricultural Cooperative Society, Muppalla, Muppalla Mandal, Guntur District.

2 The District Cooperative Officer, Guntur District

3 The District Collector and Election Authority for Cooperative Elections,

Guntur District.

4 Two CCs to the G.P. for Cooperation, High Court Buildings, Hyderabad

(OUT).

5 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

6 The Secretary, A.P.Advocates Association Library, High Court

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7 8 LR Copies.

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